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EXAMINER	
GUDIBANDE, SATYANARAYAN R	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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In re Application of:
Djurup et al.
Serial No.: 10/524,434
Filed: February 15, 2005
Attorney Docket No.: DJURUP=1

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.181, filed June 25, 2009, requesting that the requirement to comply with sequence rules set forth in the final Office action mailed June 18, 2009 be withdrawn.

BACKGROUND

On June 18, 2009, the examiner mailed to applicants a final Office action containing, *inter alia*, a requirement to comply with the sequence rules. Specifically, the examiner quoted a phrase from claim 1, part (a), which stated "X1 is amino acids 1-5 of SEQ ID NO: 595, 600, 605 or 606." The examiner indicated that the recited 1-5 amino acids corresponding to SEQ ID NO: 595, 600, 605 and 606 need SEQ ID NOs. The examiner set two concurrent shortened statutory periods for response. First, applicant was required to provide a response to comply with the sequence rules within one month. Second, applicant was required to respond to the final Office action within three months.

On June 25, 2009, applicants filed the petition under consideration.

DISCUSSION

The petition and the file history have been carefully considered.

As set forth in the petition, MPEP § 2422.03 states:

> Sequence identifiers can also be used to discuss and/or claim parts or fragments of a properly presented sequence. For example, language such as

> "residues 14 to 243 of SEQ ID NO:23" is permissible and the fragment need not be separately presented in the "Sequence Listing."

Therefore, "amino acids 1-5 of SEQ ID NO: 595, 600, 605 or 606" do not require their own sequence identifiers. However, claim 1 is directed to a genus of larger sequences comprising parts of sequences that are noncontiguous segments of larger sequences. 37 CFR 1.822(e) states:

> A sequence with a gap or gaps shall be presented as a plurality of separate sequences, with separate sequence identifiers, with the number of separate sequences being equal in number to the number of continuous strings of sequence data. **A sequence that is made up of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence.** (emphasis added)

Furthermore, the sequence set forth in claim 1 comprises seven specifically identified amino acids. 37 CFR 1.821(a) states, in part:

> Nucleotide sequences and/or amino acid sequences as used in §§ 1.821 through 1.825 are interpreted to mean an **unbranched** sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides.

37 CFR 1,821(b) states:

> Patent applications which contain disclosure of nucleotide and/.or amino acid sequences, in accordance with the definition in paragraph (a) of this section, shall, with regard to the manner in which the nucleotide and/or amino **acid** sequences are presented and described, conform exclusively to the requirements of §§ 1.821 through 1.825.

Thus, since claim 1 is directed to a genus of sequences that may contain seven specifically identified amino acids, it needs its own sequence identifier and cannot recite noncontiguous segments from different sequences.

The petition also expresses concern regarding the two concurrent time periods set for response. MPEP § 710.02(b) indicates that a single shortened period for response must be set for any Office action:

> Under the authority given to him or her by 35 U.S.C. 133, the Director of the USPTO has directed the examiner to set **a** shortened period for reply to every action. (emphasis added)

Thus, the final rejection mailed June 18, 2009 incorrectly sets two time periods for response.

DECISION

The petition is subsequently **GRANTED.**

The requirement in the final rejection that "[T]he 1-5 amino acids corresponding to SEQ ID NO: 595,600, 605 and 606 need SEQ ID Nos" is **withdrawn**. There is no requirement that small segments of larger sequences be separately listed in the sequence listing; see MPEP § 2422.03 (discussed above). Were the segments from SEQ ID No.: 595 et al. not present, the sequence shown in claim 1 would not need to comply with the sequence rules because it would not have at least four specifically defined amino acids. However, with those segments present, the sequence has seven specifically defined amino acids and, therefore, must comply with the sequence rules.

In view of the mis-stated sequence rule compliance requirement, the final rejection is hereby VACATED and the examiner will be instructed to re-issue the final rejection with a correctly stated requirement to comply with the sequence rules. The requirement will cite 37 CFR 1.822 (e) and will require a new sequence listing wherein each sequence having "amino acids 1-5 of SEQ ID NO: 595, 600, 605 or 606" will be given its own sequence identifier. That Office action will have a three-month shortened statutory period to respond.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Remy Yucel
Director, Technology Center 1600